IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT APPEALS NOs : 1015 & 1101 of 2004

W.A.NO. 1015/2004 :-

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 05/02/2004 in WP NO : 13344 OF 1991 on the file of the High Court.)

Between:

A. Surya Rao, s/o Bemanna, 62 years,

Officer, Indian Overseas Bank, Zonal Office,

Hyderabad.

..... APPELLANT

AND

1 The Deputy General Manager

(Disciplinary Authority)

Indian Overseas Bank, Central Office,

P.B.No. 3755, 762 Anna Salai,

Chennai – 600 002.

2. The General Manager (Appellate Authority)

Indian Overseas Bank, Central Office,

P.B.No. 3766, 762 Anna Salai,

Chennai – 600 002.

.....RESPONDENTS

Counsel for the Appellant: MR.M. VIJAYA KUMAR,

Counsel for the Respondents: Smt. K.ANNAPURNA REDDY,

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Officer, Indian Overseas Bank, Zonal Office,

Hyderabad.

….. RESPONDENT

Counsel for the Appellants: Smt. K.ANNAPURNA REDDY,
Counsel for the Respondent : MR.M. VIJAYA KUMAR,

The Court made the following :

::ORDER::

(Per Hon'ble Sri Justice G. Raghuram)

Both the appeals are preferred against the judgment of the learned single Judge dated 5.2.2004 in W.P. No. 1334 of 1991. The writ petitioner is the appellant in W.A. No. 1015 of 2004 while the respondents in the writ petition – the Disciplinary and Appellate Authorities of the Indian Overseas Bank, are the appellants in W.A. No. 1101 of 2004. As the appeals could be considered and disposed of together they have been accordingly heard and are disposed of by this common judgment. The parties are referred to as arrayed in the writ petition.

Facts leading to the appeals :

The petitioner entered the service of the Indian Overseas Bank (for short 'the Bank') in 1970 as an Assistant. After an intermediary promotion as an officer in 1973, he was promoted as an Officer Grade-II in 1980. In 1982 the petitioner was working as the Manager of the Amalapuram Branch of the Bank. After his transfer from Amalapuram Branch and while he was working as an officer in the Agricultural Credit Department at the Central Office, Madras, the petitioner was suspended

pending enquiry by proceedings dated 24.5.1985. The order of suspension stated that during his tenure as Manager of Amalapuram Branch, acts of commission and omission of the petitioner were prejudicial to the interests of the Bank and disciplinary action is contemplated against him. Later by proceedings dated 26.8.88 a charge sheet was issued alleging contravention of the Bank's Conduct Regulations 1976. The charge in brief, as could be culled out from the statement of imputations set out in the charge sheet, is that the petitioner opened a current account in the name of one J. Ravindranath on 15.1.1982; four TTs' were received and credited to the account; the petitioner allowed the proceeds of the above TTs to be withdrawn immediately after credit of the amounts; two of the TTs credited on 4.2.82 and 15.9.82 in amounts of Rs.15 lakhs each were fictitious, as a result of which the bank incurred loss to the extent of Rs.30 lakhs. The charge against the petitioner, in substance, was that he had opened the account without proper enquiries resulting in the opening of a fictitious account; that the petitioner had failed to ensure the genuineness of TTs by personally contacting the Janapath Branch and obtaining confirmation in writing; that the large remittance in the newly opened account should have put the petitioner on alert and instead of safeguarding the interests of the bank, he resorted to the irregular procedure of arranging for funds expecting remittance and that he passed for payment, a cheque No.856917 dated 19.5.82 for Rs. 1,62,000/- in the account when there was a material alteration in the amount in figures which was not authenticated by the drawer of the cheque.

The petitioner submitted his reply/explanation dated 8.010.88 to the charge sheet. Thereafter a disciplinary enquiry was ordered and an enquiry officer appointed. The enquiring authority by his report dated 31.8.90 recorded a finding of guilt against the petitioner in respect of the charges. Thereupon the 1st respondent – the Disciplinary Authority by the order dated 12.12.90 imposed the penalty of withholding four future increments of the petitioner with cumulative effect and ordered that the period of his suspension shall not be treated as spent on duty. On 7.2.91 the petitioner preferred an appeal to the Appellate Authority – the 2nd respondent, against the order of the 1st respondent dated 12.12.90. By the order of the 2nd respondent dated 14.3.91 the appeal was rejected and the punishment awarded by the Disciplinary Authority confirmed.

Aggrieved by the order of the Disciplinary Authority as confirmed by the Appellate Authority, the petitioner filed the writ petition. The writ petition was disposed of by the

order dated 5.2.2004 recording that it was allowed.

The petitioner contended before the learned single Judge and reiterates in the appeal that it were his efforts which brought to light the fraud committed by certain persons on the bank and in the prosecution of such persons including an Accountant of the Branch, he was one of the prosecution witnesses in the case by the CBI. The prosecution resulted in the conviction of the accused. Despite having acted with integrity and in the best interests of the bank he was unnecessarily implicated. On the legal platform the petitioner contends that as the enquiry officer and the Disciplinary Authority were distinct the report of the enquiry ought to have been furnished to him. No such report was furnished to him prejudicing him and in violation of the principles of natural justice. He also contends that the appellate authority did not pass an adequately reasoned order nor were any reasons recorded by the appellate authority to reject the various grounds urged by the petitioner in the appeal. As the order of the appellate authority is cryptic, it is invalid. The other contention of the petitioner is that the punishment is disproportionate to the gravity of misconduct that was alleged and found.

The learned single Judge, relying upon the decision of the Supreme Court in ***Union of India vs Mohd. Ramzan Khan ()*** held that the non-furnishing of the copy of the enquiry officer's report to the petitioner was detrimental and prejudicial to his interest, that in fact no such report was furnished to the petitioner before passing the final disciplinary orders and that therefore the order of the disciplinary is unsustainable and the writ petition is liable to be allowed on this ground alone. Learned single Judge however rejected the other contention of the petitioner that the order of the appellate authority was cryptic and non-speaking. He held that when an appellate order is one of affirmance, it is not necessary to record detailed reasons for rejection of the appeal. Having concluded that the non supply of the enquiry officer's report to the petitioner was fatal to the disciplinary proceedings, the learned single Judge held that there was no necessity in the circumstances to go into the proportionality of the punishment. In conclusion the learned single Judge set aside the orders of the disciplinary authority and of the appellate authority. However, noticing that the writ petitioner attained the age of superannuation and had retired from service the learned single Judge held that having regard to the factual circumstances, instead of calling upon the respondent Bank to conduct an enquiry from the stage of furnishing of the enquiry officer's report, the ends of justice would

be met by concluding the proceedings in the writ petition itself. Accordingly, the learned single Judge held that the petitioner's pay be fixed notionally by granting four increments as on the date of his retirement and that all other benefits flowing out of such determination be paid to him. However, arrears of salary against those four increments were denied treating them as punishment for misconduct alleged and proved against him.

Analysis :

By the proceedings dated 12.12.1990, the 1st respondent – Disciplinary Authority imposed on the petitioner the major penalty of stoppage of four increments with cumulative effect and also directed the treatment of the period of petitioner's suspension as not on duty. The decision of the disciplinary authority is subsequent to the date of the judgment of the Supreme Court in *Ramzan Khan* (1 supra). *Ramzan Khan's* judgment was pronounced on 20.11.1990. It laid down the principle that wherever the enquiry officer is different from disciplinary authority and a report from such enquiry officer holds the delinquent guilty of all or any of the charges either with or without a proposal for any particular punishment, the delinquent officer is entitled to a copy of such report and also to make a representation against it, if he so desire. The Supreme Court also held that the non-furnishing of the report would amount to violation of rules of natural justice and render the disciplinary proceedings liable to challenge thereafter. The Supreme Court however ordained that the principle enunciated in *Ramzan Khan* has a prospective application and no punishment imposed prior to the date of the decision shall be open to challenge on the basis of the law declared therein.

In ***S.P. Viswanathan vs Union of India and others ()*** the Supreme Court reiterated that the decision in *Ramzan Khan* has prospective effect and would not affect orders passed prior to the date of *Ramzan Khan*. Again in ***Divisional Commercial Superintendent and others vs K.Nagarajan ()*** the Supreme Court reiterated that the *Ramzan Khan* principle would have prospective operation and would not affect the validity of a punishment imposed earlier. In *Nagarajan's* case he was removed from service by an order dated 17.6.85 and his departmental appeal was rejected on 25.7.85. In the circumstances the Supreme Court observed that as both the order of removal as well as the order dismissing the departmental appeal were prior to the

date of the decision in *Ramzan Khan*, the principle enunciated in *Ramzan Khan* would have no application.

A Constitution Bench of the Supreme Court in ***The Managing Director, ECIL, Hyderabad vs B. Karunakaran ()***, developed the principle further. In Karunakaran, the Supreme Court reiterated that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee in respect of the charges levelled against him; a denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove the innocence and is a breach of principles of natural justice; as such denial constitutes breach of principles of natural justice, statutory rules if any which deny the report to the employee are against the principles of natural justice and therefore invalid and a delinquent employee would be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject; and whether the employee asks for the report or not, the report has to be furnished to him. The *Karunakaran* judgment further held that the *Ramzan Khan* principle and the law laid down therein would apply to employees in all establishments whether Government or non Government, public or private and would be applicable whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of a copy of the report or are silent on the subject. Whenever the rules require an enquiry to be held for inflicting the punishment in question, held the *Karunakarn* judgment, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its finding on the charges levelled against him.

In the case on hand admittedly and demonstrably the enquiry officer was not the disciplinary authority and neither the report of the enquiry officer nor his findings were communicated to the petitioner before the disciplinary order dated 12.12.1990. The petitioner was therefore denied a fair opportunity of persuading the disciplinary authority that there were serious flaws in the procedure followed, the analysis of evidence, the conclusions and recommendations of the disciplinary authority and that the enquiry report should be eschewed for those reasons, by the disciplinary authority. As the order of the disciplinary authority is subsequent to the date of the judgment in *Ramzan Khan*, as per the settled and binding precedents the

disciplinary authority was obligated to have afforded a reasonable opportunity to the petitioner to submit his objections to the enquiry report by supplying him a copy of such report to enable him to submit his objections thereto. This was not done in the case on hand. This failure is fatal to the order of the disciplinary authority dated 12.12.1990. What is more, a very extensive and elaborate memorandum of appeal (running into 39 paragraphs) was considered in a very laconic manner. Having regard to the denial of reasonable opportunity to the petitioner by the disciplinary authority, as aforesaid, the prejudice to the petitioner could at least have been mitigated had the appellate authority considered the extensive objections of the petitioner in greater detail and had dealt with at least the substantial objections contained in the petitioner's memorandum of appeal. Among the objections of the petitioner set out in his memorandum of appeal are the following, in brief:

A. The claiming of privilege and grant of it by the enquiry officer in respect of the investigation report denied the petitioner affective cross-examination of MW1 and has prejudiced his defence.

B. The extended suspension of the petitioner since 24.5.85 and the tardy and lazy processing of the departmental enquiry with the charge sheet having been issued on 26.8.88 and the disciplinary order on 12.12.90, was unjustified and the treatment of the entire period of his extended suspension as not on duty, constitutes arbitrary exercise of the discretion of the disciplinary authority in the matter of treatment of the period of suspension, particularly in the context of the substantive punishment of stoppage of four increments with cumulative effect imposed on him.

C. The findings of the enquiry officer are perverse and based on conjectures and surmises and not on rational evidence.

D. The charges levelled allege procedural violations/deviations. No *mala fide* intention including an intention to misappropriate or defraud the bank, was either alleged or found.

E. The punishment of stoppage of four increments with cumulative effect was irrationally imposed without considering the fact that the prosecution of the accused including an Accountant of the branch, was facilitated by the prompt and timely action and report of the petitioner.

F. The long, blemishless and meritorious service of the petitioner was not considered by the disciplinary authority. This was a compelling and relevant material that was eschewed.

In the context of the denial of reasonable opportunity by the disciplinary authority by the non-furnishing of the enquiry report to the petitioner, it was necessary for the appellate authority to have taken adequate care to undo the damage caused by the disciplinary authority by greater care, caution and concern in the disposal of the appeal by recording reasons on the substantial aspects pointed out by the petitioner in his memorandum of appeal. This was not done. The order of the appellate authority, the 2nd respondent dated 14.3.1991 cannot, in the peculiar facts and circumstances of the case, be sustained. The view taken by the learned single Judge to the contra regarding the validity of the appellate authority's order cannot therefore be sustained, in the circumstances of the case.

As the disciplinary and appellate orders are patently illegal and unsustainable, the appropriate course as indicated in *Ramzan Khan* and clarified in *Karunakaran*, would have been to set aside the disciplinary and appellate orders and remit the matter back to the disciplinary authority to take up the enquiry, if the respondents so desire, from a stage anterior to the passing of the disciplinary order, after furnishing a copy of the enquiry report to the petitioner, soliciting his objections thereon and thereafter for the disciplinary authority to pass orders afresh. Instead, the learned single Judge, on noticing that the petitioner retired from service on superannuation (w.e.f. 31.3.2001) ordered that the petitioner's pay be fixed notionally by granting four increments as on the date of his retirement with all other benefits paid to him, however without arrears of salary in respect of such four increments. In effect, this court itself substituted the penalty of stoppage of four future increments with cumulative effect imposed by the disciplinary authority and confirmed by the appellate authority to one of stoppage of four increments without cumulative effect. Normally where the order of the disciplinary authority is set aside on the ground of violation of the essential principles of natural justice, the conclusion of guilt, an area normatively within the domain of the disciplinary authority or the appellate authority, is also effaced. In the absence of a legitimate conclusion of the guilt of the delinquent employee, no punishment could be imposed, nor substituted even by this court. As the order under appeal has held that the order of the disciplinary and

appellate authorities are set aside, the conclusion of guilt recorded therein is also eclipsed. The substitute punishment as ordered by the learned single Judge runs contrary to this legal position.

On the above analysis the judgment under appeal is set aside to the extent of the alternative punishment is imposed. The conclusion of the learned single Judge, that on the singular ground of non supply of enquiry report to the petitioner the disciplinary authority's order is invalid and is set aside, is confirmed. The order of the appellate authority confirming the order of the disciplinary authority is declared invalid both on account of the patent infirmity of the disciplinary authority's order as well as for not recording adequate reasons in the context of the facts and circumstances of the case. The matter if remitted back to the disciplinary authority. If the disciplinary authority so desires, he may proceed with the disciplinary enquiry from the stage anterior to the order dated 12.12.1990 after calling upon the petitioner to submit his objections to the report of the enquiry officer, which had since been communicated to him. On receipt of the objections of the petitioner, the disciplinary authority shall consider the objections carefully and may pass appropriate orders thereon after duly recording reasons on the substantive points urged in the memorandum of objections, if any, that the petitioner may submit to the disciplinary authority. We may point out that due regard should be had in any such order to be passed by the disciplinary authority, to the nature of the charges levelled against the petitioner, to the degree of his misconduct (if so found), the mitigating circumstances if any as regard his past record of service as well as his diligence in facilitating the prosecution in respect of the events which formed the gravamen of the allegations in the departmental enquiry. The disciplinary authority shall also consider the reasons for the extended period of the petitioner's suspension pending enquiry from 1985 till the date of his reinstatement and whether in the facts and circumstances of the case the entirety of the extended period of suspension or any part of it should rationally and legitimately be treated as not on duty, in the context of all the facts and circumstances of the case including the gravity of the misconduct alleged and found. On this aspect the disciplinary authority should be duly conscious of the fact that the treatment of the period of suspension should not be as a measure of punishment but as an ancillary decision to the punishment if any awarded. The punishment is for the misconduct if any found. While deciding on the treatment of the period of suspension, the disciplinary authority must necessarily and rationally adjudicate, the factors for the extended period of suspension, the rationality of having continued the

suspension, the promptitude or lack of it with which the departmental proceedings were pursued by the Bank and whether the delay in the departmental proceedings was on account of any unreasonable conduct of the petitioner.

On the analysis above, WA No. 1015 of 2004 is allowed and WA No. 1101 of 2003 is dismissed with the directions as above. There shall however no order as to costs.

Date:27.10.2004 ----------

Pvsn Justice J.Chelameswar

Justice G.Raghuram

.....REGISTRAR

To

1 The Deputy General Manager

(Disciplinary Authority)

Indian Overseas Bank, Central Office,

762 Anna Salai, Chennai – 600 002.

2. The General Manager (Appellate Authority)

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